FLOWCHARTS FOR 35 U.S.C. § 102(e) DATES:
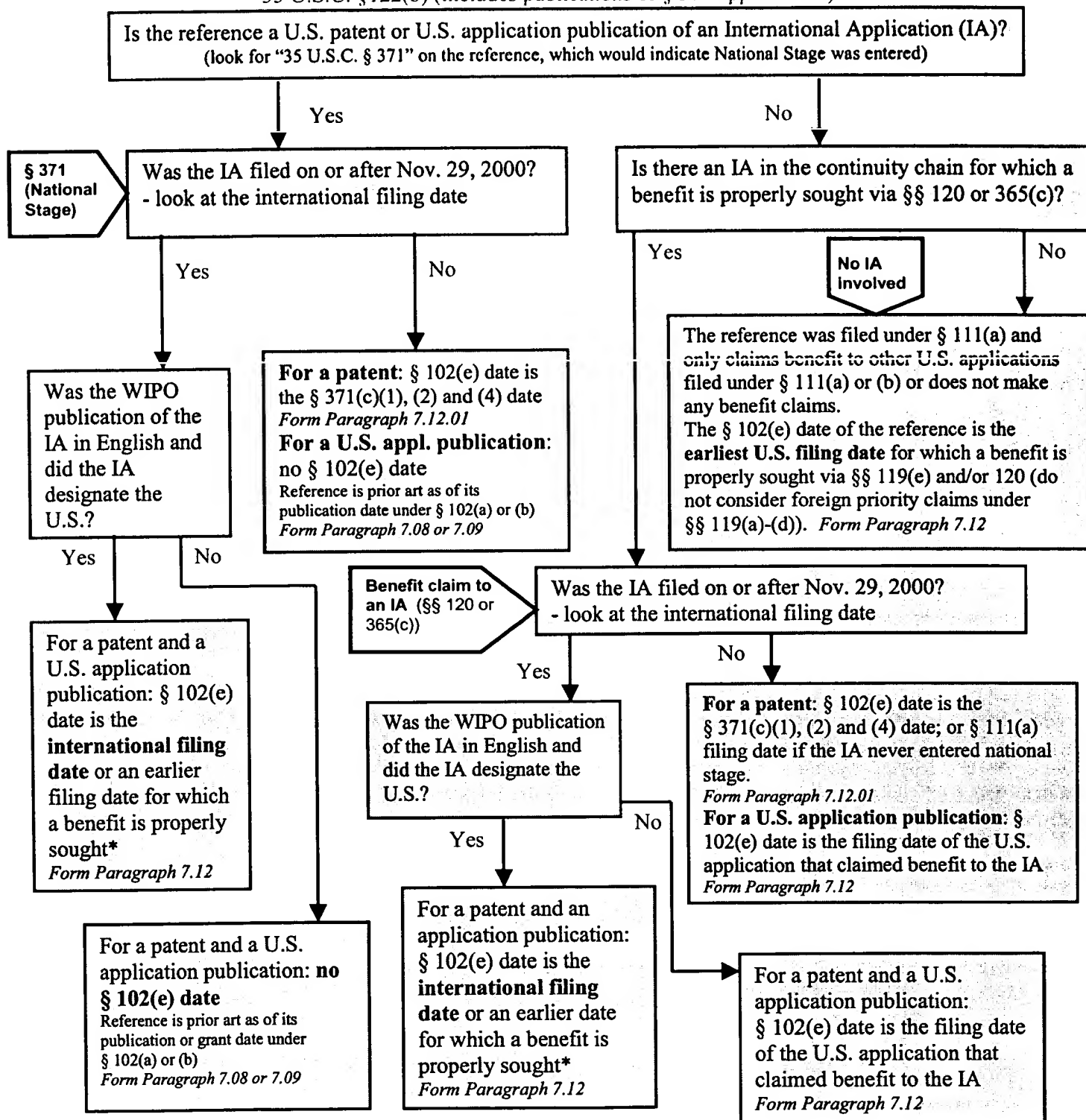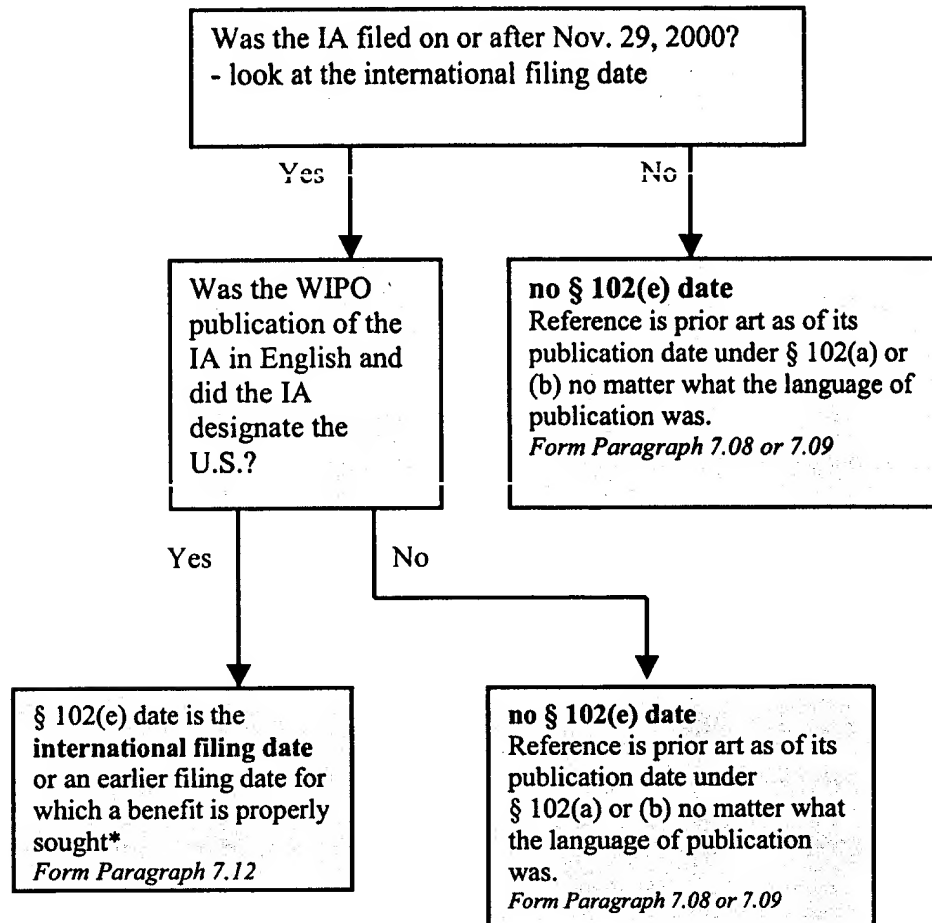
Apply to all applications and patents, whenever filed
Chart 1: For U.S. patent or U.S. patent application publication under 35 U.S.C. §122(b) (includes publications of § 371 applications)

Is the reference a U.S. patent or U.S. application publication of an International Application (IA)?
(look for "35 U.S.C. § 371" on the reference, which would indicate National Stage was entered)

Yes

No

§ 371 (National Stage)

Was the IA filed on or after Nov. 29, 2000?
- look at the international filing date

Is there an IA in the continuity chain for which a benefit is properly sought via §§ 120 or 365(c)?

Yes

No

Yes

No IA involved

No

Was the WIPO publication of the IA in English and did the IA designate the U.S.?

Yes   No

For a patent: § 102(e) date is the § 371(c)(1), (2) and (4) date
Form Paragraph 7.12.01
For a U.S. appl. publication: no § 102(e) date
Reference is prior art as of its publication date under § 102(a) or (b)
Form Paragraph 7.08 or 7.09

The reference was filed under § 111(a) and only claims benefit to other U.S. applications filed under § 111(a) or (b) or does not make any benefit claims.
The § 102(e) date of the reference is the **earliest U.S. filing date** for which a benefit is properly sought via §§ 119(e) and/or 120 (do not consider foreign priority claims under §§ 119(a)-(d)). *Form Paragraph 7.12*

Benefit claim to an IA (§§ 120 or 365(c))

Was the IA filed on or after Nov. 29, 2000?
- look at the international filing date

No

For a patent and a U.S. application publication: § 102(e) date is the **international filing date** or an earlier filing date for which a benefit is properly sought*
Form Paragraph 7.12

Yes

Was the WIPO publication of the IA in English and did the IA designate the U.S.?

No

Yes

For a patent: § 102(e) date is the § 371(c)(1), (2) and (4) date; or § 111(a) filing date if the IA never entered national stage.
Form Paragraph 7.12.01
For a U.S. application publication: § 102(e) date is the filing date of the U.S. application that claimed benefit to the IA
Form Paragraph 7.12

For a patent and a U.S. application publication: **no § 102(e) date**
Reference is prior art as of its publication or grant date under § 102(a) or (b)
Form Paragraph 7.08 or 7.09

For a patent and an application publication: § 102(e) date is the **international filing date** or an earlier date for which a benefit is properly sought*
Form Paragraph 7.12

For a patent and a U.S. application publication: § 102(e) date is the filing date of the U.S. application that claimed benefit to the IA
Form Paragraph 7.12

* Consider benefit claims properly made under § 119(e) to U.S. provisional applications, § 120 to U.S. nonprovisional applications, and § 365(c) involving IAs. Do NOT consider foreign priority claims.

EXHIBIT

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FLOWCHARTS FOR 35 U.S.C. § 102(e) DATES:
Apply to all applications and patents, whenever filed
Chart II: For WIPO publication of International Applications (IAs)

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┌─────────────────────────────────────────────┐
│ Was the IA filed on or after Nov. 29, 2000?  │
│ - look at the international filing date       │
└─────────────────────────────────────────────┘
         │ Yes                      │ No
         ▼                          ▼
┌──────────────────────┐  ┌──────────────────────────────┐
│ Was the WIPO         │  │ no § 102(e) date             │
│ publication of the   │  │ Reference is prior art as of  │
│ IA in English and    │  │ its publication date under    │
│ did the IA           │  │ § 102(a) or (b) no matter     │
│ designate the        │  │ what the language of          │
│ U.S.?                │  │ publication was.              │
└──────────────────────┘  │ Form Paragraph 7.08 or 7.09   │
    │ Yes      │ No        └──────────────────────────────┘
    ▼          ▼
┌──────────────────────┐  ┌──────────────────────────────┐
│ § 102(e) date is the │  │ no § 102(e) date             │
│ international filing  │  │ Reference is prior art as of  │
│ date or an earlier   │  │ its publication date under    │
│ filing date for      │  │ § 102(a) or (b) no matter     │
│ which a benefit is   │  │ what the language of          │
│ properly sought*     │  │ publication was.              │
│ Form Paragraph 7.12  │  │ Form Paragraph 7.08 or 7.09   │
└──────────────────────┘  └──────────────────────────────┘
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* Consider benefit claims properly made under § 119(e) to U.S. provisional applications, § 120 to U.S. nonprovisional applications, and § 365(c) involving IAs. Do NOT consider foreign priority claims.

Glossary of Terms:

U.S. patent application publication = pre-grant publication by the USPTO under 35 U.S.C. § 122(b)

International application (IA) = an application filed under the Patent Cooperation Treaty (PCT)

§ 371 application = an IA that has entered the national stage in the U.S. (35 U.S.C. § 371(c)(1), (2) and (4))

November 29, 2000 = the effective date for the amendments to §§ 102(e) and 374

WIPO = World Intellectual Property Organization

WIPO Publication = a publication of an IA under PCT Article 21(2) (e.g., Publication No. WO 99/12345)

§ 111(a) = provision of the patent code that states the **filing requirements** for **nonprovisional applications**

§ 111(b) = provision of the patent code that states the **filing requirements** for **provisional applications**

§ 119(e) = provision of the patent code that allows for **priority claims to provisional applications**

§ 119(a)-(d) = provision of the patent code that allows for **priority claims to foreign applications**

§ 120 = provision of the patent code that allows for **benefit claims to nonprovisional applications**

§ 365(c) = provision of the patent code that allows for **benefit claims to international applications**